LIBRARY
SUPREME COURT, U. S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1958

No. 72

UNITED STATES OF AMERICA, APPELLANT,

vs.

GEORGE DONALD SHIREY

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FILED MAY 28, 1958
PROBABLE JURISDICTION NOTED OCTOBER 13, 1958

Supreme Court of the United States

OCTOBER TERM, 1958

No. 72

UNITED STATES OF AMERICA, APPELLANT,

vs.

GEORGE DONALD SHIREY

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

INDEX

	Original	Print
Record from the U.S.D.C. for the Middle District of Pennsylvania		
Information	1	1
Notice of motion to dismiss the information (omitted in printing)	3	2
Motion to dismiss the information	5	2
Memorandum and order granting defendant's motion to dismiss the information	7	3
Notice of appeal	16	8
Statement of docketentries	18	9
Clerk's certificate (omitted in printing)	19	9
Order noting probable jurisdiction	20	10

[fol. 1] **IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

No. 12527

18 USC 214 Offer to Procure Appointive Public Office

UNITED STATES OF AMERICA

vs.

GEORGE DONALD SHIREY

INFORMATION—filed July 23, 1954

THE UNITED STATES ATTORNEY CHARGES:

On or about the 5th day of December 1953, in the City of York, Middle District of Pennsylvania, and within the jurisdiction of this Court,

GEORGE DONALD SHIREY,

in violation of the Act of Congress, June 25, 1948, c 645, Sec. 1, 62 Stat. 694, 18 U.S.C. Sec. 214, did KNOWINGLY, WILFULLY and UNLAWFULLY offer or promise to S. WALTER STAUFFER, a Member of Congress of the 19th Congressional District of Pennsylvania, to donate $1,000 a year to the Republican Party to be used as they see fit, in consideration of the use or the promise to use any influence to procure for him the appointive office, under the United States, of Postmaster of York, Pennsylvania.

J. JULIUS LEVY
United States Attorney
Middle District of Pennsylvania

Dated: July 23, 1954.

[fol. 2] • • •

[fol. 3] IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

• • • •

NOTICE OF MOTION TO DISMISS THE INFORMATION—filed August 19, 1954

(omitted in printing)

• • • •

AFFIDAVIT OF SERVICE (omitted in printing)

• • • • •

[fol. 4] • • •

[fol. 5] IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

(Title omitted)

MOTION TO DISMISS THE INFORMATION—filed August 19, 1954

The defendant moves that the information be dismissed on the following ground:

The information does not state facts sufficient to constitute an offense against the United States.

HERBERT B. COHEN
LAVERE C. SENFT

By Herbert B. Cohen
56 S. George Street
York, Pennsylvania

[fol. 6] • • •

[fol. 7] IN UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

• • • •

No. 12527 Criminal

UNITED STATES OF AMERICA

v.

GEORGE DONALD SHIREY

• • • •

[fol. 8] MEMORANDUM AND ORDER GRANTING DEFENDANT'S MOTION TO DISMISS INFORMATION—
March 17, 1958

This is a motion to dismiss the Information because the Information does not state facts sufficient to constitute an offense against the United States of America.

The Information charges that:

> "On or about the 5th day of December 1953, in the City of York, Middle District of Pennsylvania, and within the jurisdiction of this Court, GEORGE DONALD SHIREY, in violation of the Act of Congress, June 25, 1948, c. 645, Sec. 1, 62 Stat. 694, 18 U.S.C. Sec. 214, did KNOWINGLY, WILFULLY and UNLAWFULLY offer or promise to S. WALTER STAUFFER, a Member of Congress of the 19th Congressional District of Pennsylvania, to donate $1,000 a year to the Republican Party to be used as they see fit, in consideration of the use or the promise to use any influence to procure for him the appointive office, under the United States, of Postmaster of York, Pennsylvania."

As above indicated, this Information was brought under 18 U.S.C. § 214 which reads as follows:

> "Offer to procure appointive public office
>
> "Whoever pays or offers or promises any money or thing of value, to any person, firm, or corporation in consideration of the use or promise to use

[fol. 9] any influence to procure any appointive office or place under the United States for any person, shall be fined not more than $1,000 or imprisoned not more than one year, or both."

The counterpart to this statute appears in the next section of the Code (18 U.S.C. § 215) and reads as follows:

> "Acceptance or solicitation to obtain appointive public office.
>
> "Whoever solicits or receives, either as a political contribution, or for personal emolument, any money or thing of value, in consideration of the promise of support or use of influence in obtaining for any person any appointive office or place under the United States, shall be fined not more than $1,000 or imprisoned not more than one year, or both."

No case construing Section 214 has been brought to our attention, nor has our independent search disclosed any.

In United States v. Hood et al., 343 U.S. 148 (1952), appellees were indicted for violating 18 U.S.C. § 215, which, as above indicated, makes it a misdemeanor for anyone to solicit or receive contributions in consideration of the promise of support or use of influence in obtaining for any person "any appointive office or place under the United States." The trial court dismissed certain counts of the indictment which alleged the solicitation of contributions in return for promises to use influence to obtain offices which were not in existence at the time of the solicitation or the return of the indictment but which the President had been authorized to create under the Defense Production Act of 1950. The order of dismissal was appealed by the Government direct to the Supreme Court under the Criminal Appeals Act, 18 [fol. 10] U.S.C. (Supp. IV) § 3731. The Supreme Court in reversing stated, inter alia:

> "We think the District Court was wrong. The statute is plainly broad enough on its face to cover the sale of influence in connection with an office which had been authorized by law and which, at

the time of the sale, might reasonably be expected to be established. That was the situation here and we do not have to go further to say whether the words will cover the sale of an office which is purely the creature of the seller's fancy.

"The evil at which the statute is directed is the operation of purchased, and thus improper, influence in determining the occupants of federal office. But in attacking that evil, Congress outlawed not the use of such influence, but the solicitation of its purchase, the peddling of the forbidden wares. As is not uncommon in criminal legislation, Congress, in order to strike at the root, made the scope of the statute wider than the immediate evil. Even judges need not be blind to the fact of political life that it helps in influencing political appointments to be forehanded with a recommendation before an office is formally created. Certainly it was not unreal for Congress to believe that the sale of influence in anticipation of jobs was equally damaging to the proper operation of the federal service and to take steps to prevent it. It did so in this Act. Nothing has been suggested, either by the sparse legislative history or by prior judicial construction, to restrain us from giving effect to the obvious, ordinary reading of the statute. It is pressed upon us that criminal statutes are to be strictly construed. But this does not mean that such legislation 'must be construed by some artificial and conventional rule.' *United States v. Union Supply Co.*, 215 U.S. 50, 55. We should not read such laws so as to put in what is not readily found there. But equally we should not read out what as a matter of ordinary English speech is in.

"This Act penalized corruption. It is no less corrupt to sell an office one may never be able to deliver than to sell one he can. Dealing in futures also discredits the processes of government. There is no indication that this statute punishes delivery of the fruit of the forbidden transaction—it forbids [fol. 11]the sale. The sale is what is here alleged. Whether the corrupt transaction would or could ever be performed is immaterial. We find no basis for

allowing a breach of warranty to be a defense to corruption."

In the instant case we are not dealing in a sale, rather an attempted purchase.

Sections 214 and 215, supra, first appear, substantially in pari materia, as a single act, approved December 11, 1926, 44 Stat. 918, H.R. 10739, Public, No. 525, as follows:

"An Act To prevent purchase and sale of public office.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That it shall be unlawful to pay or offer or promise to pay any sum of money, or any other thing of value, to any person, firm, or corporation in consideration of the use or promise to use any influence, whatsoever, to procure any appointive office under the Government of the United States for any person whatsoever.

"SEC. 2. It shall be unlawful to solicit or receive from anyone whatsoever, either as a political contribution, or for personal emolument, any sum of money or thing of value, whatsoever, in consideration of the promise of support, or use of influence, or for the support or influence of the payee, in behalf of the person paying the money, or any other person, in obtaining any appointive office under the Government of the United States.

"SEC. 3. Anyone convicted of violating this Act shall be punished by imprisonment of not more than one year, or by a fine of not more than $1,000, or by both such fine and imprisonment.

"SEC. 4. All Acts and parts of Acts inconsistent herewith are hereby repealed."

[fol. 12] This is a criminal statute and with the reservations made in United States v. Hood, supra, must be strictly construed. United States v. Five Gambling Devices, 7 Cir., Slip Opinion February 18, 1958. The construction of a statute should be with reference both to the history of the legislation and to other sections of

the law with which it is in pari materia. Gutschalk v. Peck, D.C.N.D. Ohio, 1919, 261 Fed. 212.

As above indicated, Sections 214 and 215 first appeared in 1926 as a single act. The soliciting section (215) specifically mentions "political contribution." No such characterization is found in Section 214 under which this Information is drawn. The Information here alleges that the defendant offered on promised to donate $1,000 a year to the Republican Party. The section in question specifically limits the payee to "any person, firm or corporation." A political party has been defined as a body of persons associated for the purpose of promoting certain views, opinions, or principles with respect to government. 29 C.J.S. Political Parties § 84. It is in no sense of the word a person, a firm, or a corporation. Had the Congress so desired, or intended, it could have added to the words "person, firm or corporation" the further words "or political party."

Having in mind the obvious evil at which both Section 214 and Section 215 are directed, namely, the traffic in [fol. 13] federal offices, it is interesting to note that only in § 215 (solicitation) was Congress concerned about a political contribution. The two sections have stood with no substantial change for nearly thirty-two years. It is not, in my judgment, the province of the courts to attempt to rationalize this apparent deliberate omission.

In the instant case the Information does not charge that the offer was to contribute to the individual named therein, a Congressman; the offer was made to the individual to contribute to the Republican Party. Considering Sections 214 and 215 as a whole, and having in mind the rules of construction above referred to, particularly in the light of the Hood case, supra, it is my conclusion that the Information does not state facts sufficient to constitute an offense against the United States of America.

Motion to dismiss the Information will be granted.

FREDERICK V. FOLLMER
United States District Judge

March 17, 1958

[fol. 14] ORDER

NOW, to wit., March 17, 1958, in accordance with Memorandum this day filed, It is Ordered and Decreed that defendant's motion to dismiss the Information be and the same is hereby granted.

FREDERICK V. FOLLMER
United States District Judge

[fol. 15] • • •

[fol. 16] IN UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

(Title omitted)

• • • •

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—filed April 14, 1958

I. Notice is hereby given that the United States appeals to the Supreme Court of the United States from the order of March 17, 1958, dismissing the information charging the defendant with a violation of 18 U.S.C. 214.

The appeal is taken pursuant to 118 U.S.C. 3731.

II. The clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the following:

1. Transcript of docket entries
2. Information
3. Motion to dismiss
4. Memorandum opinion dated March 17, 1958, sustaining the motion to dismiss
5. Order dated March 17, 1958, dismissing the information
6. This notice of appeal

III. The following question is presented by this appeal:

Whether an offer or promise to a member of Congress to donate money to a political party in consideration of the use or promise to use influence to procure for the defendant an appointive place under the United States is within the proscription of 18 U.S.C. 214.

ROBERT J. HOURIGAN
United States Attorney

[fol. 17] PROOF OF SERVICE (Omitted in printing)

[fol. 18] IN UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

(Title omitted)

* * * *

STATEMENT OF DOCKET ENTRIES

1. Criminal Information: Vio: 18 USC., Sec. 214.
Filed July 23, 1954

2. Not Arraigned.

3. Motion to Dismiss the Information.
Filed Aug. 19, 1954

4. Memorandum and Order Granting Defendant's Motion to Dismiss the Information.
Filed Mar. 17, 1958.

5. Notice of Appeal to the Supreme Court of the United States.

Dated April 14, 1958
Attest: T. H. CAMPION
Clerk.

* * * *

[fol. 19] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 20] SUPREME COURT OF THE UNITED STATES

No. 72, October Term, 1958

UNITED STATES OF AMERICA,
Appellant,

vs.

GEORGE DONALD SHIREY

APPEAL from the United States District Court for the Middle District of Pennsylvania.

ORDER NOTING PROBABLE JURISDICTION—October 13, 1958

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary calendar.

U. S. GOVERNMENT PRINTING OFFICE 1958 483294 581